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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ELIZABETH TAPLEY STOW,

Defendant and Appellant.

F049443

(Super. Ct. No. TCF144170)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Walter L. Gorelick, Judge.

Susan D. Shors, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, J. Robert Jibson, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Harris, Acting P.J., Cornell, J. and Hill, J.

INTRODUCTION

Appellant Elizabeth Tapley Stow pled no contest to five counts of oral copulation of a person under 18 years of age and to seven counts of unlawful sexual intercourse with a minor. At sentencing, the trial court ordered Stow to register as a sex offender pursuant to Penal Code section 290, subdivision (a)(1)(A),¹ as to the oral copulation counts only because that offense requires mandatory registration and the unlawful intercourse counts do not. At trial and in this appeal, Stow challenges the mandatory registration provision as a violation of equal protection.

Based upon the holding of *People v. Hofsheier* (2006) 37 Cal.4th 1185, we will vacate the sex offender registration requirement and remand the matter for the trial court to exercise its discretion.

FACTUAL AND PROCEDURAL SUMMARY

The issue on appeal is purely one of law, therefore only a summary recitation of facts is provided.

Stow was 27 years old and an English teacher at a high school in Visalia in 2005. Over the course of a four-month period, Stow engaged in sexual intercourse and acts of oral copulation with three of her male students, all of whom were 17 years of age at the time. During the four-month period, Stow and the minors consumed alcohol together. Some of the offenses occurred at Stow's residence, others occurred after Stow and one of the minors left a party, and others after Stow and one of the minors left a concert.

School officials investigated rumors that Stow was engaging in sexual activity with students. Two students admitted being sexually involved with Stow and police were notified. Shortly thereafter, Stow, accompanied by counsel, surrendered to authorities.

¹ All further statutory references are to the Penal Code unless otherwise specified.

Initially, Stow admitted having sexual intercourse with the three students, but denied engaging in acts of oral copulation with them. Later, Stow changed her plea to no contest to the seven counts of unlawful sexual intercourse with a minor (§ 261.5, subd. (c)) and five counts of oral copulation with a person under the age of 18 years (§ 288a, subd. (b)(1)).

On November 18, 2005, Stow received a sentence of nine years four months in prison, suspended. Stow was placed on probation for a period of five years, ordered to serve one year in the county jail, and directed to register as a sex offender. Stow challenged the mandatory registration requirement for the oral copulation counts, asserting that it violated equal protection to require mandatory registration for oral copulation with a minor, but not for unlawful intercourse with a minor.

DISCUSSION

Stow contends that the section 290, subdivision (a)(1)(A), mandatory lifetime registration requirement violates equal protection because it mandates lifetime registration for those convicted of engaging in acts of oral copulation with a minor, but not those convicted of unlawful sexual intercourse with a minor. The People concede the issue.

Recently, the California Supreme Court decided this issue in *People v. Hofsheier*, *supra*, 37 Cal.4th at page 1185. In *Hofsheier*, the court held that the statutory distinction in section 290, subdivision (a)(1)(A), requiring mandatory registration for those convicted of voluntary oral copulation with a minor of the age of 16 or 17, but not of someone convicted of voluntary sexual intercourse with a minor of that age, violates the equal protection clauses of both the state and federal Constitutions. (*Hofsheier*, at p. 1206.)

The proper remedy under these circumstances is to remand the matter to the trial court for the court to exercise its discretion pursuant to section 290, subdivision (a)(2)(E), to require lifetime registration. (*People v. Hofsheier, supra*, 37 Cal.4th at p. 1208.)

DISPOSITION

The section 290, subdivision (a)(1)(A), mandatory registration requirement is stricken and the matter is remanded to the trial court for that court to consider exercising its discretion to require lifetime registration pursuant to section 290, subdivision (a)(2)(E). In all other respects the judgment is affirmed.